

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JAMES WILLIAM COLLINS,  
Appellant,

vs.

LAWRENCE E. WILSON, Warden,  
and H. L. SHADLE, Accountant,  
San Quentin Prison,  
Appellees.

No. 21605

APPELLEES' BRIEF

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## TOPICAL INDEX

	<u>Page</u>
JURISDICTION	1
STATEMENT OF THE CASE	1
SUMMARY OF APPELLEES' ARGUMENT	2
ARGUMENT	3
PRELIMINARY STATEMENT	3
THE FEDERAL DISTRICT COURT DID NOT ERR BY DISMISSING APPELLANT'S COMPLAINT.	4
CONCLUSION	7

## TABLE OF CASES

<u>Hatfield v. Bailleaux,</u> 290 F.2d 632 (9th Cir. 1963)	4, 7
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JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's complaint was conferred by Title 42, United States Code section 1981 et seq., and Title 28, United States Code section 1343. The jurisdiction of this Court is conferred by Title 28, United States Code section 1291.

STATEMENT OF THE CASE

On October 5, 1966, appellant filed a civil rights complaint under Title 42, United States Code



section 1983 et seq. with the United States District Court for the Northern District of California, No. 45756 in the files of said court (CT 1-6). On November 9, 1966, summons were served on defendants, Lawrence E. Wilson and H. L. Shadle (CT 13). On November 29, 1966, the District Court extended the time for filing of defendants' responsive pleading to December 13, 1966 (CT 14).

On December 9, 1966, defendants filed a motion to dismiss or in the alternative for summary judgment, and this motion was argued on December 28, 1966 (CT 15-25).

On January 3, 1967, the District Court ordered the action dismissed with prejudice because the complaint failed to state a claim against the defendants upon which relief could be granted (CT 35). Plaintiff's (appellant herein) motion for rehearing, filed January 13, 1967 (CT 36-37), was denied by the District Court on January 19, 1967 (CT 42). Also, on the latter date, the court granted plaintiff's motion to proceed in forma pauperis on appeal (CT 42).

#### SUMMARY OF APPELLEES' ARGUMENT

Accepting as true all of the allegations of fact in appellant's complaint, there is nevertheless no





reasonable construction under which the complaint states a claim against appellees upon which relief can be granted.

## ARGUMENT

### PRELIMINARY STATEMENT

Appellant's allegations are based on circumstances which are alleged to have occurred during the prosecution of his prior appeal before this Court in Case No. 20,633.<sup>1/</sup> Thus, appellant contends that he submitted to the prison authorities for mailing on March 25, 1966, his opposition to the request of appellee in that case for an extension of time within which to file his brief; that the prison authorities, including appellees, failed to timely mail this opposition to the court; that the failure to timely mail the opposition was based on the knowingly false premise that appellant lacked sufficient funds in his account to pay the cost of postage; that as a result of this opposition having failed to reach the court for consideration along with

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1. This appeal was decided by the Court of Appeals on November 18, 1966. Collins v. Wilson, No. 20633. The District Court's denial of appellant's petition for a writ of habeas corpus was affirmed. Appellant's continuing incarceration has therefore at all times been valid, and the alleged conduct of appellees herein, could not have resulted in actual damage to appellant.



the request for an extension of time, the extension was granted, the appellee was allowed to file his brief, and after the expiration of a considerable length of time the appeal was decided on its merits against appellant; and, therefore, as a result of Warden Wilson's failure to timely mail appellant's opposition to appellee's request for an extension of time appellant's incarceration was unduly extended. Appellant then concluded in his complaint that the conduct of Warden Wilson and H. L. Shadle resulted in damages in the amount of \$50,000.

THE FEDERAL DISTRICT COURT  
DID NOT ERR BY DISMISSING  
APPELLANT'S COMPLAINT.

The federally-protected right which appellant alleges was impaired by appellees' conduct is one of reasonable access to the state and federal courts. Hatfield v. Bailleaux, 290 F.2d 632, 636 (9th Cir. 1963) (emphasis supplied). That appellant had such reasonable access to the courts appears on the face of his complaint. Thus, it is apparent that appellant had actual access to the United States District Court for the Northern District of California wherein his petition for habeas corpus was filed and determined, and to the United States Court of Appeals for the Ninth Circuit wherein his appeal from the District Court's denial of the above petition was



filed and determined on the merits. With the exception of the particular document expressing appellant's opposition to appellee's request for an extension of time in the prior appeal appellant does not, and indeed truthfully could not, allege that each of the documents that he sought to send to those courts were not promptly mailed by the prison authorities. Moreover, appellant's opposition to any request on the part of appellee in the prior appeal for an extension of time within which to file his brief was expressed to the court by way of appellant's "Motion to Hold Respondent in Default" which was filed in Case No. 20633 on March 24, 1966 (CT 24), the day before Judge Chambers granted appellee's application for an extension of time (CT 23).

Speaking more in the general than in the specific, appellant's frequent access to both state and federal courts is a matter of record. Thus, appellant filed a petition for a writ of habeas corpus with the Superior Court for Marin County in Case No. 41558 in the files of said superior court on November 16, 1964; he filed a petition for habeas corpus in the United States District Court for the Northern District of California in Action No. 43231 in the files of that court on January 20, 1965; he filed a petition for habeas corpus in the California Supreme Court in Action No. 8760



in the files of that court on March 3, 1965; he filed a petition for a writ of habeas corpus with the United States District Court in Action No. 43803 in the files of that court on July 1, 1965 (It is the circumstances alleged to have occurred during the appeal from the denial of this petition that form the basis for the instant appeal); he also filed a petition for a writ of mandamus and a petition for certiorari with the United States Supreme Court, No. 210 Misc., October Term 1966, on May 18, 1966.<sup>2/</sup>

There are therefore affirmative indications of record which show an absence of any prison regulation or practice pertaining to the preparation, service and filing of pleadings or documents, or to the sending and receiving of such communications, resulting in appellant's having been substantially delayed in obtaining a judicial determination in such a court proceeding.

For the above reasons, it was proper for the District Court to have determined that appellant's complaint did not state a cause of action against appellee

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2. Appellant himself has made reference to most of the above actions in his opening brief, pages 1-2, filed in his prior appeal to this Court in Case No. 20633. This Court should take judicial notice of appellant's statements in this document, which is a part of its records on this prior appeal.







which could be based on their deprivation of appellant's right to reasonable access to the courts. See Hatfield v. Bailleaux, supra, at 637.

Any delay in this Court's final determination of appellant's prior appeal in Case No. 20633 was obviously not the result of the failure of appellees herein to promptly mail appellant's opposition to the request for an extension of time. This is especially evident when one takes into account the fact that appellant's opposition to that request for an extension of time was expressed to the Court of Appeals prior to the court's granting of the extension by way of his motion to hold appellee therein in default for failure to timely file his brief.

#### CONCLUSION

For the aforementioned reasons, appellees respectfully submit that the District Court properly dismissed with prejudice appellant's civil rights action on the ground that appellant's complaint failed to state a claim upon which relief could be granted.

The order should be affirmed.

DATED: April 14, 1967

THOMAS C. LYNCH, Attorney General  
of the State of California  
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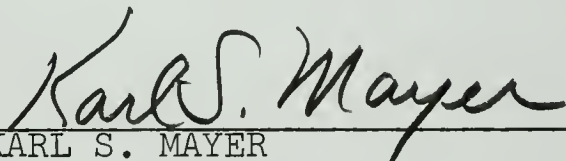


CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion this brief is in full compliance with these rules.

DATED: San Francisco, California

April 14, 1967

  
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KARL S. MAYER  
Deputy Attorney General of  
the State of California

